



**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

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2014 MAR 28 P 1:37

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Municipal Pensions Oversight Board TITLE NUMBER: 211

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Policemen's and Firemen's Pension Disability  
Calculation

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB4039

SECTION §64-9-1, PASSED ON March 8, 2014

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: April 28, 2014

Authorized Signature

**TITLE 211  
LEGISLATIVE RULE  
MUNICIPAL PENSIONS OVERSIGHT BOARD**

**SERIES 1  
POLICEMEN'S AND FIREMEN'S PENSIONS DISABILITY CALCULATION**

**FILED**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§211-1-1. General.**

- 1.1. Scope. -- This legislative rule governs the methodology used to calculate disability pensions paid from the municipal policemen's and firefighter's pension plans.
- 1.2. Authority.-- W.Va. Code §8-22-18a(g).
- 1.3. Filing Date. -- March 28, 2014.
- 1.4. Effective Date. -- April 28, 2014.

 **SCANNED**

**§211-1-2. Definitions.**

2.1 "Member" means any paid police officer or firefighter participating in a municipal pension fund who has applied for disability retirement who's medical condition, injury, illness or mental condition qualifies that person unfit for duty under the standards set forth by National Fire Protection Association standard 1001 in effect at the time of the application for disability.

2.2. "Salary or compensation" means remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: Provided, that the remuneration received by the member during any twelve-consecutive-month period used in determining benefits, which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by the member in the two consecutive twelve-consecutive-month periods immediately preceding the twelve-consecutive-month period used in determining benefits, shall be disregarded.

2.3. "Year-one" means the second twelve-consecutive-month period preceding the twelve-consecutive-month period used in determining benefits.

2.4. "Year-two" means the twelve-consecutive-month period immediately preceding the twelve-consecutive-month period used in determining benefits.

2.5. "Year-three" means the twelve-consecutive-month period used in determining benefits.

2.6. "Active military duty" means at least one full year of continuous, chronological military service.

2.7. "Pension secretary" means the person appointed by the policemen's or firefighter's pension board of trustees to keep a full and permanent record of all the proceedings of the board.

2.8. "Municipal treasurer" means the treasurer or other municipal officer, exercising the power and authority commonly exercised by a treasurer. The municipal treasurer is custodian and fund fiduciary of all the assets of the municipal policemen's and firemen's pension and relief funds.

2.9. "Base salary" means remuneration received by a member, exclusive of all overtime and other remuneration.

2.10. "Total salary" means all remuneration received by a member, including any deferred compensation.



### **§ 211-1-3. Qualified Military Experience**

3.1. Members qualify for benefit enhancement for up to four years of qualified military experience. To meet the criteria for qualified military experience, a member shall:

3.1.1. have been on active military duty;

3.1.2. have received an honorable discharge from the United States armed forces; and

3.1.3. if the member is returning to employment following active duty:

3.1.2.a. present himself or herself for resumption of duty to the appointing municipal officer within six months from his or her date of discharge, or within two years if the member has been hospitalized for, or was convalescing from, an illness or injury incurred in, or aggravated during military service; and

3.1.3.b. be accepted by two medical examiners, at least one of which is appointed by the oversight board, as being mentally and physically capable of performing the required duties as a member of the paid police or fire department at the time of hire or resumption of duty.

### **§211-1-4. Total and Temporary Disability and Total and Permanent Disability Calculations**

4.1. The pension secretary and the municipal treasurer shall independently determine the monthly amount paid to a member awarded a total and temporary or total and permanent disability in accordance with the provisions of West Virginia Code §8-22-24, and shall calculate the member's salary or compensation in accordance with West Virginia Code §8-22-16(d). Specifically the monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of West Virginia Code §8-22-23a shall be equal to sixty percent of the monthly salary being received by the member, at the time he or she is disabled, or the sum of five hundred dollars per month, whichever is greater. The pension secretary and the municipal treasurer shall compare their independently arrived at calculations to ensure their accuracy.

4.2. The following formulas shall be used to calculate disability awards:

4.2.1. Year one adjusted salary = year three base salary ÷ year one base salary x year 1 total salary

4.2.2. Year two adjusted salary = year three base salary ÷ year two base salary x year 2 total salary

4.2.3. Average adjusted salary = (year one adjusted salary + year two adjusted salary) x 50%

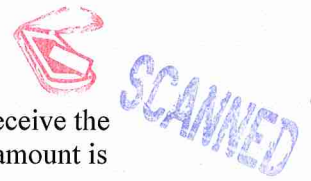
4.2.4. One hundred twenty percent of average adjusted salary = average adjusted salary x 120%

4.2.5. Annual salary = the lesser of one hundred twenty percent (120%) of average adjusted salary or year three total salary

4.2.6. Monthly salary = annual salary ÷ 12

4.2.7. If a member does not have qualifying military experience, then monthly disability salary = monthly salary x 60%





4.2.8. If a member does not have qualifying military experience, the member shall receive the amount calculated in subdivision 4.2.7 of this subsection, or \$500.00 per month, whichever amount is greater

4.2.9. If a member has one year of qualifying military experience, then monthly disability salary = monthly salary x 61%

4.2.10. If a member has one year of qualifying military experience, the member receives the amount calculated in subdivision 4.2.9 of this subsection, or \$500.00+ 1% of monthly salary, whichever amount is greater

4.2.11. If a member has two years of qualifying military experience, then monthly disability salary = monthly salary x 62%

4.2.12. If a member has two years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.11 of this subsection, or \$500.00+ 2% of monthly salary, whichever amount is greater

4.2.13. If a member has three years of qualifying military experience, then monthly disability salary = monthly salary x 63%

4.2.14. If a member has three years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.9 of this subsection, or \$500.00+ 3% of monthly salary, whichever amount is greater

4.2.15. If a member has four or more years of qualifying military experience, then monthly disability salary = monthly salary x 64%

4.2.16. If a member has four or more years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.15 of this subsection, or \$500.00+ 4% of monthly salary, whichever amount is greater

Table 211-1-4 of this rule provides a disability calculation scenario for use in subdivisions 4.2.1 through 4.2.16 of this subsection.

Table 211-1-4

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1				Total Salary		Average	Ave Adj			Monthly	Monthly Disability Salary with Military Service			
2		Twelve Consecutive	Base Salary	Inclusive	Adjusted	Adjusted	Salary @	Annual	Monthly	Disability	Active Duty/Qualified Military Years of Service			
3	Year	Month Period	No Overtime	of Overtime	Salary	Salary	120%	Salary	Salary	Salary	Year 1	Year 2	Year 3	Year 4
4														
5	Final					44,495.65	53,394.78	37,000.00	3,083.33	1,850.00	1,880.83	1,911.67	1,942.50	1,973.33
6	3	5/1/12 thru 4/30/13	34,000.00	37,000.00										
7	2	5/1/11 thru 4/30/12	25,000.00	35,000.00	47,600.00									
8	1	5/1/10 thru 4/30/11	23,000.00	28,000.00	41,391.30									
Year one (E8) = (C6 + C8) x D8 or (34,000.00 + 23,000.00) x 28,000.00 = 41,391.30														
Year two (E7) = (C6 + C7) x D7 or (34,000.00 + 25,000.00) x 35,000.00 = 47,600.00														
Average Adjusted Salary (G5) = (E7 + E8) x 50% or (47,600.00 + 41,391.30) x 50% = 44,495.65														
Average Adjusted Salary @ 120% (H5) = G5 x 120% or (44,495.65 x 120%) = 53,394.78														
Annual Salary (I5) = the lesser of (D6) and (H5) or MIN(37,000.00; 53,394.78) = 37,000.00														
Monthly Salary (J5) = (I5 ÷ 12) or (37,000.00 ÷ 12) = 3,083.33														
Monthly Disability Salary (K5) = (J5 x 60%) or (3,083.33 x 60%) = 1,850.00														
Active Duty/Qualified Military Years of Service Year 1 (M5) = (J5 x 61%) or (3,083.33 x 61%) = 1,880.83														
Active Duty/Qualified Military Years of Service Year 2 (N5) = (J5 x 62%) or (3,083.33 x 62%) = 1,911.67														
Active Duty/Qualified Military Years of Service Year 3 (O5) = (J5 x 63%) or (3,083.33 x 63%) = 1,942.50														
Active Duty/Qualified Military Years of Service Year 4 (P5) = (J5 x 64%) or (3,083.33 x 64%) = 1,973.33														

